

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MICHAEL J. GIGNAC,

Plaintiff

V.

DONALD ALLEN, et al.,

Defendants

Civil No. 89-0226 P

***MEMORANDUM DECISION*¹**

¹ Pursuant to 28 U.S.C. ' 636(c), the parties have consented to have United States Magistrate Judge David M. Cohen conduct all proceedings in this case, including trial, and to order the entry of judgment.

Plaintiff Michael Gignac, an inmate at Maine State Prison ("MSP") in Thomaston, seeks to hold the two defendants remaining in this case liable under 42 U.S.C. § 1983 for violations of his constitutional rights stemming from a March 1989 incident during which he was confined naked in a high-security cell. During a bench trial held April 16 and 17, 1991 at MSP I granted the oral motions of defendants Donald Allen, Martin Magnusson and David George to dismiss the case as against them.² I reserved judgment as to defendants John Albert Struk and Thomas N. Johnston, MSP sergeants personally involved in the events of which Gignac complains. After carefully considering the evidence adduced at trial and post-trial memoranda submitted by the parties, I find defendant Struk liable for violating the plaintiff's rights to due process and to freedom from cruel and unusual punishment, and defendant Johnston not liable on either charge.

I. FINDINGS OF FACT

² Defendants Allen and George were dismissed from the case without objection from the plaintiff.

On March 26, 1989 Michael Gignac was housed in the Segregation unit of MSP, a wing in which certain inmates are separated from the general population for a variety of reasons. Some await administrative classification; some are violent or suicidal; others are serving disciplinary "sentences" meted out in punishment for infractions of prison rules. Gignac, then 21, was among the latter group. On March 12 he had begun serving a term of 20 days in Segregation imposed by the prison disciplinary committee for disorderly conduct during a frisk of a fellow inmate.³ The 6-foot-tall, 195-pound Gignac was housed in the North Side, one of four corridors of cells comprising the Segregation unit. Inmates sent to Segregation for disciplinary reasons normally were to be confined in the Plank or Restraint sides, where privileges were even more sharply restricted than in Segregation generally. However, because of overcrowding prison officials had begun asking inmates in Segregation to agree to "double-cell," or share a cell, with another inmate. Such double-celling was permitted in the more spacious North and South sides only. Gignac had agreed to double-cell on the North Side with inmate Robert Gregoire as of March 15. Gignac, as a disciplinary inmate, was not permitted to smoke regardless of where he was housed in Segregation. Nonetheless he managed to smoke a pack or a pack-and-a-half of unfiltered cigarettes daily while confined in the North Side. His craving for cigarettes was such that he became irritable and agitated when unable to smoke them. As of the evening of March 26 Gignac had neither showered nor been permitted a daily hour of corridor exercise in three days. He had been taken to court before sunrise on Friday, March 24 and returned

³ Gignac had been housed in Segregation on three previous occasions: from August 8-11, 1988, from December 7-16, 1988 and from February 14-22, 1989. Gignac was confined at MSP on pretrial status until March 24, 1989, when he began serving a sentence of eight years, with four years suspended, for arson, burglary, theft and escape.

too late for his shower and exercise that day. No inmate in Segregation for disciplinary reasons was allowed a shower or corridor exercise on Saturdays or Sundays.

Sgt. John Albert Struk was in charge of supervising all correctional officers in the prison during his shift from 1 to 9:30 p.m. on Sunday, March 26. That evening he faced a problem. A suicidal inmate was being sent to Segregation; however, the unit, housing 51 inmates in its 31 cells, was filled to capacity. All inmates who could be double-celled were; all single cells were single by necessity, for example because they housed violent or psychotic inmates. Struk determined that Gregoire was the only inmate eligible to be moved to the prison's general population. Struk intended to replace Gregoire with the suicidal inmate, hoping that double-celling with Gignac would help deter the newcomer from harming himself. Struk, accompanied by correctional officer David George, entered the cell housing Gignac and Gregoire at approximately 7:15 p.m. to remove Gregoire and to request that Gignac accept the new roommate. Gignac, perceiving that Gregoire was being ``dragged out," became highly agitated at least in part because he felt Gregoire's life was threatened amid the general prison population. When asked by Struk to accept the newcomer, he heatedly responded, ``I'm not fuckin' doubling." At approximately 8 p.m. George escorted a verbally abusive Gignac, who was clad in pants, underpants and socks, to the shower at the front of the North Side corridor. George then pushed Gignac into the shower, closed the outer door and informed him he would ``live there for a while." Gignac continued to shout protests loudly enough to be overheard by fellow inmates in the North Side as he vigorously pounded on and rattled the shower door and window.

Struk had anticipated that Gignac would remain in the shower overnight, until the necessary moves could be made in the morning to open a single cell for him. The shower and a 5-by-8-foot room near the Segregation unit's guard station, known as the Administrative Segregation (``Ad Seg") room, were the only secure places to which Gignac could be moved. Of the two, Struk thought the

shower better ventilated. Shortly after Gignac was removed to the shower he was provided a mattress, blanket, bedding and a pillow but none of the personal items he had kept in his cell -- a book, family pictures, writing materials, stamps, coffee and cigarettes. After listening to 10 or 15 minutes of unremitting pounding and screaming Struk sent an officer to warn Gignac to quiet down. The warning merely served to increase the volume of Gignac's protests. Struk decided to move Gignac to the Ad Seg room, where he would be further distanced from his fellow inmates and less likely to incite a disturbance. At approximately 9 p.m. Struk asked Gignac to walk to the Ad Seg room; Gignac complied. Gignac was requested to remove his pants and socks and did so. Guards provided Gignac a sheet (although he had requested a blanket) and a mattress. Struk's purpose in stripping Gignac of his pants and socks was twofold: to search the clothing for contraband, as was routinely done when Segregation prisoners were moved among corridors, and to "manage" his behavior. Struk has no recollection whether the clothing ever was actually searched; in any event, it was not returned to Gignac and Struk went off duty shortly afterward, at 9:30 p.m. Gignac spent an uncomfortable night wearing only underpants and covered by a sheet in the Ad Seg room. The Segregation unit was reasonably comfortable in March if one wore clothes and/or wrapped up in a blanket; it was otherwise chilly. Gignac continued to shout, his anger exacerbated by separation from his cigarettes. He unscrewed the lightbulb overhead to turn it off; guards screwed it back in and threatened to hog-tie him if he touched it again.

On the morning of Monday, March 27 Sgt. Thomas N. Johnston reported for work at 6:20 a.m. Johnston, day-side supervisor of Segregation, learned of Gignac's status upon reading the night shift's briefing sheet. He notified the prison's housing lieutenant of the overcrowding problem; sometime during the day a prisoner was transferred out of MSP to free one space. At about 9:55 a.m. Johnston asked Gignac to strip for a body search prior to a scheduled trip to the MSP hospital. Gignac

refused, instead donning a shirt provided for the hospital visit. Johnston cancelled the visit and shut Gignac back in the Ad Seg room, precipitating a new round of banging and screaming that lasted into the afternoon. Sometime thereafter Johnston determined to confine Gignac in Segregation's highest security area -- the Restraint Side. Struk, who had reported for work at 1 p.m. and again was overseeing the entire prison, concurred. With reshuffling Johnston freed a space in Restraint Cell # 30, one of three cells in the Restraint Side corridor. About 1:50 p.m. Johnston lifted the flap on the Ad Seg room and peered in at Gignac. Gignac begged for a shower, whereupon Johnston replied, ``That depends on what you do." He ordered Gignac to stand facing the rear wall; Gignac did so. Johnston, with the assistance of two guards, then handcuffed Gignac and led him to Restraint Cell # 30. Spotting Struk while en route to Restraint, Gignac threatened and cursed him. Once Gignac was inside the cell, Johnston requested that he strip himself of his one remaining article of clothing, his underpants. Gignac, believing the ``strip-out" a prelude to a shower, complied. Johnston then told Gignac that if his behavior warranted he would be permitted a shower the next day. Gignac by his own admission ``snapped," screaming, cursing Johnston, pounding and banging on the locked cell door. Gignac denied, but I find as a fact, that he threatened to shred his mattress. Johnston removed Gignac's mattress at approximately 2:01 p.m., hoping to coerce Gignac to ``earn" back the mattress and the underwear by calming down immediately. The strategy did not work as planned. Gignac continued to pound and scream until Johnston went off duty at 3 p.m., failing to ``earn" anything back during that interval. Given Gignac's agitation and his nakedness Johnston placed him on a 15-minute watch. He left for the day at 3 p.m., envisioning that Gignac would calm down and earn at least his mattress and underwear by suppertime.

Gignac was left naked in the 5-by-7-foot cell, furnished solely with a metal-slab bed frame, a metal toilet and a metal sink that provided cold but not hot water. The cell reeked of sweat odor.

About 4:20 p.m. Gignac was served his evening meal and pleaded for his underwear. Informed he could not have it, he threw the meal out into the corridor and jammed the paper plate into the toilet, which he then flushed, deliberately flooding his cell. Apprised of the incident, which had caused leakage into the cells below, Struk ordered that the water in Gignac's cell be shut off. Per Struk's orders, the standing water was cleaned up. Struk had no further contact with Gignac before leaving work at about 9:30 p.m. As the evening wore on, Gignac was bothered by small gnats that bit like mosquitoes. He was embarrassed and humiliated that a nurse making rounds to deliver medications saw him unclothed. He was unable to flush his waste products or wash his hands, although Struk averred that prison guards would have temporarily turned the water on upon request. The light in the corridor, which Gignac was unable to control from inside his cell, glared until Gignac demanded it be shut off. He was then plunged in pitch darkness for the remainder of the night. The bare metal bed frame was so cold on his naked flesh that he wrapped himself in toilet paper in a vain attempt at warmth. Someone subsequently removed his roll of toilet paper, leaving him only enough for sanitary purposes. His bare bottom was numb; he held his testicles to prevent them from contacting the cold metal. He could not sleep and only dozed. Beginning at about 4:15 a.m., prison logs note, he was ``hollering and requesting a mattress and blanket." He continued to scream, eventually pounding his bed frame as well, for 45 minutes.

Johnston was out sick on Tuesday, March 28. No one allowed Gignac a shower or exercise that morning, and his water remained shut off. At about 11 a.m. Gignac again threw a meal into the corridor. Struk reported for work about 1 p.m. At about 6:35 p.m. Struk visited Gignac to ``counsel" him and rewarded him for improved behavior with a blanket and book but no clothes. Struk explained his and Johnston's ``behavior-management policy" -- in essence that Gignac had to ``earn" things back through good behavior. The counselling consisted in part of the message: ``We can be

just as much of an asshole as you but we can do worse. Next time you refuse to cooperate you'll think about it beforehand." Gignac promised he would double-cell with anyone if allowed to return to North Side and smoke cigarettes. Gignac's water was turned on at about 9:30 p.m., about the time Struk left work. Warmed by the blanket, Gignac was able to get some sleep.

Johnston returned to work at approximately 6:20 a.m. on Wednesday, March 29. Reviewing the situation, he decided Gignac had calmed down sufficiently to have earned more comforts back. He provided Gignac with underpants sometime during the morning and permitted him to clean his cell by about noon. Thereafter Gignac was permitted his first shower since March 23. He was not allowed an hour's corridor exercise. At about 12:55 p.m. the 15-minute watch was removed. At about 8:01 a.m. on March 30 Gignac was moved from Restraint Cell # 30 back to North Side.

Both Struk and Johnston had the authority to provide Gignac with clothing, blankets, a mattress or a space heater while Gignac was confined naked in Restraint Cell # 30. Neither perceived that Gignac was cold enough, or his behavior good enough, to warrant the provision of any of those items during that time. Gignac was "written up" and found guilty by the prison disciplinary committee of rules infractions related to his behavior en route to the shower, his flooding of Restraint Cell # 30, his threatening of Struk while being moved from Ad Seg to Restraint and his refusal to strip for a search prior to his hospital visit. He served additional disciplinary time in Segregation and lost good-time credits as a result.

II. LEGAL ANALYSIS

To prevail under 42 U.S.C. ' 1983 Gignac must prove that (1) the defendants acted under color of state law, (2) he was deprived of rights secured under the United States Constitution or federal statutes and (3) the defendants caused the deprivation. S. Nahmod, *Civil Rights and Civil Liberties Litigation: The Law of Section 1983* ' 2.01 at 72-73 (2d ed. 1986). No one disputes that Struk and

Johnston, employees of MSP, acted under color of state law. Gignac contends, and the defendants dispute, that his constitutional rights were violated and that they are legally responsible.

A. Cruel and Unusual Punishment

Gignac first complains that Struk and Johnston subjected him to cruel and unusual punishment, violating rights conferred by the Eighth Amendment as applied to the states through the Fourteenth Amendment. As the Supreme Court has recently clarified, inquiry into the cruelty of conditions of confinement consists of both objective and subjective components: "was the deprivation sufficiently serious?" and "did the officials act with a sufficiently culpable state of mind?" *Wilson v. Seiter*, 59 U.S.L.W. 4671, 4672 (U.S., June 17, 1991).

Satisfaction of the objective component entails proof that conditions of confinement "deprive inmates of the minimal civilized measure of life's necessities" such as "essential food, medical care, or sanitation." *Rhodes v. Chapman*, 452 U.S. 337, 347-48 (1981). *See also Seiter*, 59 U.S.L.W. at 4673 ("Some conditions of confinement may establish an Eighth Amendment violation 'in combination' when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise -- for example, a low cell temperature at night combined with a failure to issue blankets.") (emphasis in original). Applying *Rhodes* in a 1983 case, this court (Gignoux, J.) found conditions of MSP's general-population cells constitutional because "the basic human needs of the inmates -- reasonably adequate shelter, sanitation, food, clothing, personal safety, and medical care -- are being met." *Lovell v. Brennan*, 566 F. Supp. 672, 689 (D. Me. 1983), *aff'd*, 728 F.2d 560 (1st Cir. 1984). The court, however, found conditions then prevailing in MSP's Restraint Side unconstitutionally cruel in that "the evidence is overwhelming that the manner in which defendants have used the Restraint cells for confinement of

disruptive inmates at MSP has been so inhumane and so violative of minimal concepts of decency as to violate the Eighth Amendment." *Id.* at 696. The court described the Restraint cells as barren save for a hole in the floor serving as a toilet, which could be flushed only from outside the cell; lit only by a light in the foyer outside the cell; heated solely by a space heater provided by guards; windowless; having "virtually nonexistent" ventilation; and housing naked inmates who often were not provided bedding or hygienic materials and were confined to Restraint for periods ranging from several hours to several days. *Id.* at 679, 695.

As a result of the *Lovell* decision, MSP installed a toilet and sink in each of the Restraint cells and brought their level of heat and ventilation up to standards prevailing in Segregation generally. Despite these improvements, Michael Gignac was subjected to conditions on March 27 and 28, 1989 that were sufficiently inhumane to constitute cruel and unusual punishment. As is abundantly clear from *Lovell*, clothing, bedding and running water are among a human being's basic necessities. With them, the condition of Restraint Cell # 30 would have been cramped and harsh but constitutionally permissible. Without them -- in particular, without either a blanket or clothing -- it became intolerable. Gignac was deprived of warmth, sleep and dignity.⁴ He graphically and credibly described a cruel night in which he was forced to hold his testicles to prevent them from contacting the cold metal bed frame as gnats stung his bare flesh.

⁴ Gignac also was deprived of exercise and of adequate sanitation in the sense that he could not wash his hands while his water was shut off, was not afforded showers and suffered gnat stings. These deprivations standing alone may not have been unconstitutional; however, in combination with the egregious deprivation of clothing and/or a blanket in the chilly cell, they exacerbated Gignac's suffering.

Having determined that the conditions of Gignac's confinement satisfy the objective component of the test, I next proceed to consider whether Struk or Johnston possessed the requisite state of mind to be held liable. Prison officials cannot be held liable for violations of the Eighth Amendment based on inadvertence or negligence; rather, their conduct must evidence "the unnecessary and wanton infliction of pain." *Seiter*, 59 U.S.L.W. at 4672 (quoting *Rhodes*, 452 U.S. at 346 (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976))). As the Court reaffirmed in *Seiter*, "wantonness" is not a fixed concept but rather depends on the exigency of the circumstances confronting prison officials. *Id.* at 4673. In the context of a prison disturbance "that indisputably poses significant risks to the safety of inmates and prison staff" an official must act "maliciously and sadistically for the very purpose of causing harm" before Eighth Amendment liability may attach. *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986) (citation omitted); *see also Seiter*, 59 U.S.L.W. at 4673. Gignac created a disturbance and posed a threat to prison order at least through the time he was secured in Restraint Cell # 30. The guards' conduct during that period arguably could be analyzed under the "malicious and sadistic" standard. *See, e.g., Ort v. White*, 813 F.2d 318, 323 (11th Cir.), *reh'g denied*, 818 F.2d 871 (11th Cir. 1987). However, once Gignac was secured in Restraint Cell # 30 his conduct did not sufficiently threaten prison security to warrant the imposition of such a high state-of-mind requirement. Exigencies having abated, the guards' behavior became more appropriately judged by the standard of "deliberate indifference," which the Court recently clarified is the measure of wantonness in cases protesting generalized conditions of confinement.⁵ *Seiter*, 59 U.S.L.W. at 4673.

⁵ *Seiter* is distinguishable from the instant case in that the plaintiff therein complained of conditions applicable to inmates as a whole. However, the Court hinted in *Seiter* that actions directed at specific individuals can constitute conditions of confinement. *Seiter*, 59 U.S.L.W. at 4672 n.1.

On the facts as I have found them I cannot conclude that Johnston acted with either maliciousness or deliberate indifference. Johnston was responsible for stripping Gignac of his underpants and mattress upon moving him to Restraint Cell # 30 on March 27. An inmate routinely was stripped of clothing upon changing corridors in Segregation. After Gignac was stripped and learned he would be denied an immediate shower he "snapped" and threatened to shred his mattress. Johnston justifiably removed it, envisioning a temporary deprivation of both the underwear and the mattress until Gignac calmed down. Johnston's actions were in the nature of "an immediate coercive measure . . . necessitated by a spontaneous violation of a prison rule or regulation." *Ort*, 813 F.2d at 322. Johnston was out sick the next day. When he returned on March 29 Gignac had been provided the minimal necessity of a blanket. Johnston gave Gignac underwear and finally allowed him a shower.

Struk, on the other hand, not only proximately contributed to the unconstitutional confinement but also did so with the requisite deliberate indifference. He was well aware that Gignac was confined naked without bedding or a blanket in Restraint Cell # 30 and could have at least provided a blanket prior to leaving work at 9:30 p.m. He chose not to do so because he felt Gignac's behavior did not warrant it -- even though Gignac was not noted to have caused any further disruption between 4:20 p.m., when he flooded his cell, and 9:30 p.m., when Struk left work. Gignac could not have flushed a blanket down the toilet on the night of March 27; his water remained shut off. He was not considered a suicide risk, nor could he realistically have endangered anyone with a blanket while confined in the prison's highest security, three-cell corridor. Under the circumstances, it is difficult to discern any legitimate reason for denial of this one basic comfort. Struk was a busy man in March 1989, overseeing all prison cells in the crowded MSP during his shift. Nonetheless, he willfully and cruelly ignored Gignac's plight and needs. Struk cannot claim the shield of qualified immunity. *See*,

e.g., Anderson v. Creighton, 483 U.S. 635, 640-41 (1987) (court must assess whether government actor reasonably should have known his conduct in actual circumstances violated clearly established right). The unconstitutionality of the conditions of Gignac's confinement should have been apparent to a reasonable prison official in the wake of *Rhodes* and *Lovell*. The Supreme Court only recently clarified, in *Seiter*, that deliberate indifference exposes an official to liability for general prison conditions. Nonetheless, pre-1989 caselaw from the Court of Appeals for the First Circuit makes reasonably apparent the appropriateness of the deliberate-indifference standard in cases involving prisoner health and safety and/or lack of threat to institutional security. *See, e.g., Unwin v. Campbell*, 863 F.2d 124, 128-29 (1st Cir. 1988); *Cortes-Quinones v. Jimenez-Nettleship*, 842 F.2d 556, 558 (1st Cir.), *cert. denied*, 488 U.S. 823 (1988); *Leonardo v. Moran*, 611 F.2d 397, 398-99 (1st Cir. 1979).

B. Due Process

Gignac next claims that Johnston and Struk violated his Fifth Amendment⁶ right to due process of law by summarily punishing him. Due-process analysis, like Eighth Amendment analysis, comprises objective and subjective components. A plaintiff first must demonstrate the existence and violation of a protectible liberty interest; the court then must determine whether the defendants proximately caused the violation and acted with the requisite state of mind.

A liberty interest may be created by state law (such as visitation rights conferred by statute) or inhere in the Due Process Clause itself. *See, e.g., Kentucky Dep't of Corrections v. Thompson*, 490

⁶ I shall treat this as an allegation of violation of the Fourteenth Amendment, which is directly applicable to the states.

U.S. 454, 460 (1989). Gignac does not argue that a state-created interest was deprived; rather, he grounds his liberty interest in the Due Process Clause. The Supreme Court has noted that "consequences visited on the prisoner that are qualitatively different from the punishment characteristically suffered by a person convicted of crime" may invoke the protections of the Due Process Clause even in the absence of a state-created right." *Id.* (citation omitted). A prisoner's interest in avoiding solitary confinement, for example, may inhere in the Due Process Clause in that such confinement "represents a major change in the conditions of confinement and is normally imposed only when it is claimed and proved that there has been a major act of misconduct." *Wolff v. McDonnell*, 418 U.S. 539, 571-72 n.19 (1974). At the time of the incident of which he complains, Gignac was confined to Segregation (with its concomitant loss of privileges) as the result of hearing and adjudication by MSP's disciplinary committee. He therefore could properly be confined even to the high-security Restraint Cell # 30. Nonetheless, while his confinement as a disciplinary inmate expunged many privileges such as cigarette smoking, it did not entitle his custodians to punish him in any way deemed expedient. He possessed a liberty interest in being confined under the conditions pertaining generally to disciplinary inmates in Segregation, which included the provision of clothing, bedding, blankets and running water. His confinement naked in Restraint Cell # 30 for approximately 28 hours, during most of which he was deprived of running water, represented "a major change in the conditions of confinement" analogous to the imposition of solitary confinement on a general-population inmate. *See also Domegan v. Fair*, 859 F.2d 1059, 1063 (1st Cir. 1988) ("Prison officials may not . . . punish an inmate beyond the terms of confinement set by the court and the state's rules for prisons. . . . When prison administrators undertake to do something to an inmate on a temporary, but non-emergency, basis that they might not do to an inmate regularly or permanently, due process concerns are implicated.") (citation omitted); *King v. Higgins*, 702 F.2d 18, 20 (1st Cir.), *cert. denied*,

464 U.S. 965 (1983). Gignac had a protectible liberty interest in being confined warmly and decently (with clothing, bedding and blankets) absent compelling reasons. His treatment crossed the line on March 27 from "emergency" measures to summary punishment, violating his right to such minimal due process as notice and an opportunity to be heard. *See, e.g., Wolff*, 418 U.S. at 572 n.19.

An official may be held liable under § 1983 for violating due-process rights only if he or she acts with "reckless or callous indifference" to the plaintiff's rights. *Germany v. Vance*, 868 F.2d 9, 17-18 (1st Cir. 1989). "An official displays such reckless or callous indifference when it would be manifest to any reasonable official that his conduct was very likely to violate an individual's constitutional rights." *Id.* at 18. For the same reasons discussed in the context of Gignac's Eighth Amendment claim Johnston cannot be held liable for this affront to Gignac's due-process rights. His actions were closely connected in time and relevance to the behavior and threats Gignac exhibited on March 27. They were immediate coercive measures.

Struk, on the other hand, suffered Gignac to undergo treatment bearing the earmarks of punishment in that it lingered long after any threat or necessity reasonably could be perceived. Struk did not provide Gignac a blanket until 6:35 p.m. on March 28 although the record is barren of evidence of continuing disruption from Gignac while Struk was on duty between 4:20 p.m. and 9:30 p.m. on March 27 and between 1 p.m. and 6:35 p.m. on March 28. Struk deliberately chose not to exercise his authority as part of a self-proclaimed strategy of "behavior management." In so doing he stepped over the line of an "immediate coercive measure" and planted his feet firmly in the arena of "punishment." *See, e.g., Ort*, 813 F.2d at 324-25. While Struk subjectively believed his actions in leaving Gignac naked overnight justified, they were in fact disciplinary in nature, administered despite the existence of proper channels through which Gignac was in fact later punished. Struk acted with the requisite "reckless or callous indifference" to Gignac's rights. Qualified immunity does not avail him

as to this charge; cases such as *Wolff, King, Domegan* and *Germany* (decided in February 1989 but summarizing previous First Circuit caselaw on reckless or callous indifference) should have put a reasonable official on notice of the constitutional impropriety of such behavior and the state of mind attendant to liability.

III. CONCLUSION

Prison officials are entitled to wide discretion in the management of often dangerous and unruly inmates; however, deference to their difficult position `` does not insulate from review actions taken in bad faith and for no legitimate purpose" *Whitley*, 475 U.S. at 322. Michael Gignac's cruel treatment through the night of March 27, 1989 served no legitimate purpose. For the reasons articulated above, I find Sgt. Thomas N. Johnston not liable and Sgt. John Albert Struk liable for Eighth and Fourteenth Amendment violations of Gignac's rights. Gignac seeks compensatory and punitive damages, costs, interest and attorney fees.⁷ I hereby order Struk to pay Gignac Two Thousand Five Hundred Dollars (\$2,500) as compensation for his embarrassment, emotional distress, physical discomfort and the substantive deprivation of his Eighth Amendment rights. *See, e.g., Blackburn v. Snow*, 771 F.2d 556, 573 (1st Cir. 1985) (civil-rights plaintiffs may recover damages compensating for physical, mental suffering). I decline to assess punitive damages against Struk, whose actions I deem reckless but not malicious and for whose behavior MSP surely is partly to blame. Finally, I order the payment of costs, *see* Fed. R. Civ. P. 54(d), postjudgment but not prejudgment

⁷ Gignac apparently drops his earlier request for injunctive relief. *See, e.g.,* Plaintiff's Post-Trial Brief Incorporating Proposed Findings of Fact & Conclusions of Law at 16.

interest, *see, e.g., Cordero v. Jesus-Mendez*, 922 F.2d 11, 13-15 (1st Cir. 1990); *Blackburn*, 771 F.2d at 573, and reasonable attorney fees to Gignac pursuant to 42 U.S.C. ' 1988.⁸

Dated at Portland, Maine this 11th day of July, 1991.

David M. Cohen
United States Magistrate Judge

⁸ Pursuant to 42 U.S.C. ' 1988 a court may award ``in its discretion" reasonable attorney fees to the prevailing party in an action under 42 U.S.C. ' 1983. The statute's discretionary language is misleading, for ``it is well-established that a court may not deny an award of attorney's fees to a prevailing civil rights plaintiff in the absence of special circumstances rendering the award unjust" *De Jesus v. Banco Popular de Puerto Rico*, 918 F.2d 232, 234 (1st Cir. 1990) (citation omitted).